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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRC & ASSOCIATES,
Plaintiff/Counterdefendant,
v.
NUSCIENCE CORPORATION; LUMINA
HEALTH PRODUCTS, INC., and DOES
1-20, inclusive

Defendants/Counterclaimants.

NUSCIENCE CORPORATION,
Third-Party Plaintiff,
v.
JOHN CLARK; DAVID MCKINNEY; and
STEPHEN E. ABRAHAM
Third-Party Defendants .

LUMINA HEALTH PRODUCTS, INC.,
Third-Party Plaintiff,
v.
JOHN CLARK
Third-Party Defendants.

Case No. 2:13-cv-6903-ODW(CW_x)
**OSC RE. SUBJECT-MATTER AND
SUPPLEMENTAL JURISDICTION
OVER COUNTERCLAIMS AND
THIRD PARTY COMPLAINTS**

1 The Court is now in receipt of the following new pleadings in this action:
 2 (1) NuScience Corporation's Amended Answer to Complaint and Counterclaims
 3 (ECF No. 70)¹; (2) NuScience's Third-Party Complaint (ECF No. 71); (3) Lumina
 4 Health Products, Inc.'s Amended Answer With Counterclaim (ECF No. 73.); and
 5 (4) Lumina's Third-Party Complaint (ECF No. 74). These new pleadings have raised
 6 a red flag for the Court due to this case's already lengthy history. The Court's
 7 immediate concern is a jurisdictional one.

8 The Court has subject-matter jurisdiction over the original Complaint in this
 9 action based on federal-question jurisdiction under 28 U.S.C. § 1331. The
 10 Counterclaims and Third Party Complaints listed above allege that this Court has
 11 supplemental jurisdiction over the new claims under 28 U.S.C. § 1367(a). However,
 12 the Court is not so certain that these new claims "form part of the same case or
 13 controversy." 28 U.S.C. § 1367(a).

14 Moreover, with respect to the Third-Party Complaints, the Court directs the
 15 parties' attention to Federal Rule of Civil Procedure 14(a). "A defending party may,
 16 as third-party plaintiff, serve a summons and complaint on a nonparty who is or may
 17 be liable to it for all or part of the claim against it." Fed. R. Civ. P. 14(a)(1). It is not
 18 sufficient that a third-party claim is related or arises out of the same set of facts.
 19 *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983). "[A]
 20 third-party claim may be asserted only when the third party's liability is in some way
 21 dependent on the outcome of the main claim and the third party's liability is secondary
 22 or derivative." *Id.*; see also *American Zurich Ins. Co. v. Cooper Tire & Rubber Co.*,
 23 512 F.3d 800, 805 (6th Cir. 2008). At first glance, the Third-Party Complaints filed
 24 in this action do not appear to comply with Rule 14(a). If the impleader is improper

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 27 ¹ While the Court has stricken this document for NuScience's failure to comply with Local Rule 3-2,
 28 requiring initiating documents to be manually filed, the Court fully expects NuScience to correct this
 deficiency in short notice. (ECF No. 78.) Therefore, this Order to Show Cause shall apply to the
 Amended Answer and Counterclaims filed by NuScience at that time.

1 against the third-party defendants in this case, then the Court cannot exercise
2 supplemental jurisdiction over the claims.

3 Based on the foregoing, the Court hereby **ORDERS** NuScience and Lumina to
4 **SHOW CAUSE**, in writing, no later than **December 27, 2013**, why the
5 Counterclaims and Third-Party Complaints should not be dismissed for lack of
6 jurisdiction. No hearing shall be held. To discharge this Order to Show Cause,
7 NuScience and Lumina should identify the law allowing this Court to exercise
8 supplemental jurisdiction. NuScience and Lumina should also identify the specific
9 paragraphs in the Counterclaims and lengthy Third-Party Complaints that demonstrate
10 that the new claims arise from the same case or controversy as the original Complaint.
11 In addition, with respect to the Third-Party Complaints, NuScience and Lumina
12 should identify the specific paragraphs that allege that the third-party defendants are
13 or may be liable to NuScience and Lumina as a result of TRC's claims.

14 Finally, the Court is also in receipt of a letter from Stephen Abraham, who is
15 counsel for Plaintiff TRC & Associates and now a third-party defendant. (ECF
16 No. 79.) This letter, pursuant to this Court's Minute Order on November 11, 2013
17 (ECF No. 62), seeks leave to file Motions to Dismiss with respect to the
18 Counterclaims and Third-Party Complaints. The Court grants leave to file Motions to
19 Dismiss, if or when this Order to Show Cause is discharged.

20 **IT IS SO ORDERED.**

21
22 December 19, 2013

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25 **OTIS D. WRIGHT, II**
26 **UNITED STATES DISTRICT JUDGE**
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